

21

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDERS OF THE BENCH

Date of Order: 25.11.2011

MA 345/2011 (OA No. 69/2009)

Mr. P.P. Mathur, counsel for applicant.

Mr. V.S. Gurjar, counsel for respondent nos. 1 & 2.

Mr. Nand Kishore, counsel for respondent nos. 5 & 6.

None present for other respondents.

MA 345/2011

Heard on the Misc. Application for restoration of the Original Application, and having considered the submissions made on behalf of the respective parties, and the reasons stated in the Misc. Application for seeking restoration of the Original Application, we are fully satisfied with the reasons stated and, thus, the Misc. Application for restoration of the Original Application stands allowed. The Original Application is restored to its original number and status. The Original Application is taken up for final disposal today itself.

(OA No. 69/2009)

Heard learned counsels appearing for the parties. The O.A. is disposed of by a separate order on the separate-sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

8/10/08

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 25th day of November, 2011

Original Application No. 69/2009

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

Preetam Singh
S/o Shri Bheemj Singh Das,
aged about 54, years,
R/o Plot No. 11, Bank Colony,
Ramnagar 'B', Jhotwara,
Jaipur
Presently working as
Office Superintendent,
O/o the ATEN (Line),
Jaipur, D.R.M. Jaipur.

.. Applicant

(By Advocate: Shri P.P. Mathur)

Versus

1. Union of India
through the General Manager,
North Western Railway, Jaipur.
2. The Divisional Railway Manager,
Jaipur Division, North Western Railway,
Jaipur.
3. Shri Ram Chandra -Matadin,
Chief Office Superintendent,
Office of the C.M.S. Railway Hospital,
North Western Railway, Jaipur.
4. Prabhu Dayal Jat, Office Superintendent
(Construction), Jaipur Division, North Western
Railway, Jaipur.

5. Vinod Kumar Khinchi, Chief Office Superintendent (Senior DSTE Office), Jaipur Division, North Western Railway, Jaipur.
6. Jai Narain Meena, Office Superintendent (Sr. DEE/JP) Office Jaipur Division, North Western Railway, Jaipur.
7. Gopal Prasad Meena, Chief Office Superintendent (Store), Jaipur Division, North Western Railway, Jaipur.

.. Respondents

(By Advocate: Shri V.S. Gurjar for respondent nos. 1 & 2
Shri Nand Kishore for respondent nos. 5 & 6
None present for other respondents)

ORDER (ORAL)

This is third round of litigation. In the earlier OA No.66/2004, the applicant had prayed for the following reliefs:

"(a). Seniority lists dated 31.12.1995/ 01.01.1996, 16.05.2001, 01.05.2002 and the order dated 07.01.2002 which have all merged in the seniority list dated 10.01.2003 may be quashed and set aside along with the said seniority list dated 10.01.2003.

(b). Any order which comes in the way of determination of grant of seniority to the applicant above the respondent no. 3, Shri Ram Chandra, may also be quashed and set aside.

(c). The ad hoc promotion order dated 06.02.2003 granted to the respondent no. 3, Shri Ram Chandra, may be



quashed and set aside and the respondents may be directed to promote the applicant on the post of Chief OS instead of the respondent no. 3 on ad hoc basis till the regular selection is made on the said post.

(d). The name of the applicant may be considered for regular promotion on the post of Chief OS considering him senior to the respondent no. 3.

(e). Any other order or direction, which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the present case, may be passed in favour of the applicant."

2. The aforesaid OA has been disposed of vide order dated 21.01.2008 with the direction to the respondent no. 2 to decide representation of the applicant dated 25.01.2003 by passing a speaking and reasoned order with further direction that the said exercise shall be done within a period of two months from the date of receipt of a copy of the order, and intimation regarding disposal of the representation shall also be conveyed to the applicant, and in case the applicant is aggrieved, he is at liberty to take appropriate action as per law.

3. Pursuant to the order dated 21.01.2008 passed by this Bench of the Tribunal to consider the representation of the



applicant, the respondents have considered the representation and decided the same by rejecting vide order dated 07.08.2008 (Annex. A/1).

4. Aggrieved and dissatisfied with the order dated 07.08.2008 (Annex. A/1), the applicant has preferred the present OA praying to quash and set aside the orders dated 27.09.1994, seniority list of Chief Clerk dated 12.95/01.01.1996 and seniority list of OS Grade Rs. 6500-10500 dated 10.01.2003. It is also prayed that the promotion order of Shri Ram Chandra dated 06.02.2003 on the post of COS Grade Rs. 7400-11500 be also quashed and set aside.

5. Brief facts of the case are that the applicant was initially appointed on the post of Clerk on 17.12.1979. He was promoted on the post of Sr. Clerk on ad hoc basis on 04.11.1982 and later regularly promoted on 29.11.1983. The respondent no. 3, Shri Ram Chandra, who was senior to the applicant on the post of Clerk also appeared in the selection test held for the post of Sr. Clerk but was declared failed vide order dated 29.11.1983, and later on he was provisionally promoted on the post of Sr. Clerk vide order dated 28.01.1984. Thus, Shri Ram Chandra who was senior on the post of Clerk became junior to the applicant. In the seniority list prepared by the respondents for the post of Sr. Clerk, name of the



applicant appears at Sl. No. 21 whereas the name of private respondent no. 3, Shri Ram Chandra, does not appear in the seniority list as he was not promoted on the post of Sr. Clerk till then.

6. The applicant was further promoted on the post of Head Clerk on 20.06.1991 whereas respondent no. 3 Shri Ram Chandra was promoted on 20.07.1993.

7. The respondent no. 3 filed OA No. 103/1994 wherein he had prayed for direction to count his seniority on the post of Sr. Clerk from the date he was appointed and according to him he was appointed on 15.09.1984. The Tribunal allowed the said OA and directed the respondents to treat Shri Prabhu Dayal Jat and Shri Satish Sharma to be junior on the post of Head Clerk than Shri Ram Chandra for all purposes. It is also submitted on behalf of the applicant in this OA that in the aforesaid OA, the applicant was not made party respondent, and to this effect Shri Ram Chandra has no grievance against him and the applicant remained senior to Shri Ram Chandra.

8. In the impugned order by which representation of the applicant was decided by the respondents vide order dated 07.08.2008, it has been stated that Shri Ram Chandra was made senior pursuant to the direction issued by this Tribunal in



OA No. 103/1994, therefore, the plea taken by the applicant that he was senior to Shri Ram Chandra in the based grade was not accepted.

9. Per contra, the learned counsel appearing for the respondents submitted that by way of the present OA, the applicant is seeking relief to quash and set-aside order dated 27.9.94, seniority list of Chief Clerk dated 12.95/1.1.1996 and seniority list of OS grade Rs. 6500-10500 dated 10.1.2003 which is not permissible in view of Rule 321 of Indian Railway Establishment Manual and further as per policy decision seniority of the staff already decided under the extant rules or orders shall not be altered and re-opened as held in the case of P.S.Gopinathan vs. State of Kerala, reported in SLJ 2008 (3) 268 SC and further in view of the ratio decided by the Hon'ble Supreme Court in the cases reported in 2007(1) SLJ SC 72 and 2006 (1) SCT 14, the settled seniority at such a belated stage cannot be challenged.

10. Learned counsel appearing for the respondents further referred earlier OA No.66/2004 filed by the applicant and submitted that in the aforesaid OA same seniority has been challenge which is challenged now in the present OA and the Hon'ble Tribunal given direction to consider representation of the applicant, which has been considered. In the said OA, the



applicant was only given liberty to take appropriate action as per law, but no opportunity to file substantive OA was given because the aforesaid OA was also deserve to be dismissed on the ground of delay and latches. It is also submitted that the applicant has waived his right to challenge the seniority list dated 1.1.1996 at the relevant time. The issue pertains to the year 1984 and after a gap of about 24 years, it cannot be assailed and settled position cannot be unsettled at such a belated stage.

11. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record, it is not disputed that private respondent Shri Ram Chandra is senior than the applicant in the cadre of Clerk. The case of the applicant is that since he was promoted on the post of Senior Clerk on 4.11.1982 and was regularized on 29.1.1983 whereas Shri Ram Chandra was promoted as Senior Clerk on 28.1.1984, thus, in the cadre of Sr. Clerk, the applicant is senior to Shri Ram Chandra. To decide this controversy, as has been raised by the applicant, we have thoroughly considered the orders passed by this Tribunal dated 29.3.2001, (R.P.Yadav vs. UOI in OA No.171/2000, Suresh Pareek vs. UOI OA No.189/2000 and Gajanand Chaturvedi, OA No. 111/2000



and as per direction issued by this Tribunal the seniority list been amended.

12. We have also perused the order dated 14.7.1994, passed by this Tribunal in the case of Ram Chandra vs. UOI, OA No.203/1994 filed by Shri Ram Chandra wherein the Tribunal declared that Shri Ram Chandra is senior than Shri Prabhu Dayal Jat and Shri Satish Sharma.

13. We have also perused the order dated 20.9.2001 passed by this Tribunal in OA No.280/96 filed by the applicant wherein the applicant has prayed that seniority list dated 1.12.1995/1.1.1996 may be revised on the basis of the date of entry into the grade or on the basis of the date of promotion. The controversy was to determine the seniority of employees belonging to SC/ST community vis-à-vis general community candidates. The Tribunal vide its order dated 20.9.2001 observed as under:-

"2. At the time of hearing it was admitted by the learned counsel on either side that the official respondents have taken steps to recast the seniority of the cadre of ministerial staff Group-C belonging to BSWM UNIT, in the view of the judgments of Hon'ble the Supreme Court in Ajit Singh Januja-II and Jatinder Pal Singh. In a catena of cases after the general directions were issued by Hon'ble the Supreme Court in the above referred



cases, the Tribunal has directed the department to recast the seniority list in terms of the guidelines enunciated by the Apex Court. On similar lines, orders were passed by this Bench of the Tribunal in a batch of applications on 29.3.2001. As a natural consequence of these developments, the respondents have initiated action and recast the seniority list and, therefore, this OA has become infructuous.

2. We, therefore, dispose of this OA having become infructuous. However, if the applicant is aggrieved of the position assigned to him in his cadre in the recast seniority list, he is at liberty to move the appropriate forum, if so advised. No order as to costs."

14. It is evident that thereafter again same seniority list has been challenged by the applicant by filing OA No.66/2004 after a lapse of more than 8 years. The said OA was disposed of with direction to consider representation, which was pending consideration before the respondents. The respondents decided the representation vide order dated 7.8.2008 and in the third round of litigation, the present OA has been filed challenging the same seniority which has been challenged way back in 1996 by filing OA No.280/1996 and in the year 2004 by way of filing OA No. 66/2004 and now in the year 2009 by way of this OA.



15. Having considered the submissions made on behalf of the respondents, we are fully convinced that in view of the policy decision seniority has been finalized which cannot be altered and re-opened as the settled position cannot be unsettled after a long period of 24 years. Thus, not only this OA is hopelessly time barred but also not stand on merit. As held by the Supreme Court in the case of P.S.Gopinath (supra), one who sleeps over his right is deemed to have waived the right and one in knowledge of some infringement of this right, if raised no objection, acquiesces to infringement and the settled seniority cannot be upset after a long period.

16. Further, this Tribunal vide its order dated 21.1.2008 passed in OA No.66/2004 given no opportunity to file substantive OA but only given liberty to take appropriate action as per law and law does not permit the same seniority list to be challenged at such a belated stage.

17. Consequently, the OA being bereft of merit fails and the same is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S.Rathore
(JUSTICE K.S.RATHORE)
Jüdl. Member

R/